

105TH CONGRESS  
1ST SESSION

# S. 1115

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 12, 1997

Referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## AN ACT

To amend title 49, United States Code, to improve the one-call notification process, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Comprehensive One-  
5       Call Notification Act of 1997”.

1 **SECTION 2. FINDINGS.**

2 The Congress finds that—

3 (1) unintentional damage to underground facili-  
4 ties during excavation is a significant cause of dis-  
5 ruptions in telecommunications, water supply, elec-  
6 tric power and other vital public services, such as  
7 hospital and air traffic control operations, and is a  
8 leading cause of natural gas and hazardous liquid  
9 pipeline accidents;

10 (2) excavation that is performed without prior  
11 notification to an underground facility operator or  
12 with inaccurate marking of such a facility prior to  
13 excavation can cause damage that results in fatali-  
14 ties, serious injuries, harm to the environment and  
15 disruption of vital services to the public; and

16 (3) protection of the public and the environ-  
17 ment from the consequences of underground facility  
18 damage caused by excavations will be enhanced by  
19 a coordinated national effort to improve one-call no-  
20 tification programs in each State and the effective-  
21 ness and efficiency of one-call notification systems  
22 that operate under such programs.

23 **SEC. 3. ESTABLISHMENT OF ONE-CALL PROGRAM.**

24 (a) IN GENERAL.—Subtitle III of title 49, United  
25 States Code, is amended by adding at the end thereof the  
26 following:

“CHAPTER 61—ONE-CALL NOTIFICATION PROGRAM

“Sec.

“6101. Purposes.

“6102. Definitions.

“6103. Minimum standards for State one-call notification programs.

“6104. Compliance with minimum standards.

“6105. Review of one-call system best practices.

“6106. Grants to States.

“6107. Authorization of appropriations.

1   **“§ 6101. Purposes**

2           “The purposes of this chapter are—

3                   “(1) to enhance public safety;

4                   “(2) to protect the environment;

5                   “(3) to minimize risks to excavators; and

6                   “(4) to prevent disruption of vital public  
7           services,

8 by reducing the incidence of damage to underground facili-  
9 ties during excavation through the adoption and efficient  
10 implementation by all States of State one-call notification  
11 programs that meet the minimum standards set forth  
12 under section 6103.

13   **“§ 6102. Definitions**

14           “For purposes of this chapter—

15                   “(1) ONE-CALL NOTIFICATION SYSTEM.—The  
16           term “one-call notification system” means a system  
17           operated by an organization that has as one of its  
18           purposes to receive notification from excavators of  
19           intended excavation in a specified area in order to  
20           disseminate such notification to underground facility  
21           operators that are members of the system so that

1 such operators can locate and mark their facilities in  
 2 order to prevent damage to underground facilities in  
 3 the course of such excavation.

4 “(2) STATE ONE-CALL NOTIFICATION PRO-  
 5 GRAM.—The term “State one-call notification pro-  
 6 gram” means the State statutes, regulations, orders,  
 7 judicial decisions, and other elements of law and pol-  
 8 icy in effect in a State that establish the require-  
 9 ments for the operation of one-call notification sys-  
 10 tems in such State.

11 “(3) STATE.—The term ‘State’ means a State,  
 12 the District of Columbia, and Puerto Rico.

13 “(4) SECRETARY.—The term ‘Secretary’ means  
 14 the Secretary of Transportation.

15 **“§ 6103. Minimum standards for State one-call notification pro-**  
 16 **grams**

17 “(a) MINIMUM STANDARDS.—A State one-call notifi-  
 18 cation program shall, at a minimum, provide for—

19 “(1) appropriate participation by all under-  
 20 ground facility operators;

21 “(2) appropriate participation by all excavators;  
 22 and

23 “(3) flexible and effective enforcement under  
 24 State law with respect to participation in, and use  
 25 of, one-call notification systems.

1       “(b) APPROPRIATE PARTICIPATION.—In determining  
2 the appropriate extent of participation required for types  
3 of underground facilities or excavators under subsection  
4 (a), a State shall assess, rank, and take into consideration  
5 the risks to the public safety, the environment, excavators,  
6 and vital public services associated with

7               “(1) damage to types of underground facilities;

8       and

9               “(2) activities of types of excavators.

10       “(c) IMPLEMENTATION.—A State one-call notifica-  
11 tion program also shall, at a minimum, provide for

12               “(1) consideration of the ranking of risks under  
13 subsection (b) in the enforcement of its provisions;

14               “(2) a reasonable relationship between the ben-  
15 efits of one-call notification and the cost of imple-  
16 menting and complying with the requirements of the  
17 State one-call notification program; and

18               “(3) voluntary participation where the State de-  
19 termines that a type of underground facility or an  
20 activity of a type of excavator poses a *de minimis*  
21 risk to public safety or the environment.

22       “(d) PENALTIES.—To the extent the State deter-  
23 mines appropriate and necessary to achieve the purposes  
24 of this chapter, a State one-call notification program shall,  
25 at a minimum, provide for

1           “(1) administrative or civil penalties commensu-  
 2           rate with the seriousness of a violation by an exca-  
 3           vator or facility owner of a State one-call notification  
 4           program;

5           “(2) increased penalties for parties that repeat-  
 6           edly damage underground facilities because they fail  
 7           to use one-call notification systems or for parties  
 8           that repeatedly fail to provide timely and accurate  
 9           marking after the required call has been made to a  
 10          one-call notification system;

11          “(3) reduced or waived penalties for a violation  
 12          of a requirement of a State one-call notification pro-  
 13          gram that results in, or could result in, damage that  
 14          is promptly reported by the violator;

15          “(4) equitable relief; and

16          “(5) citation of violations.

17   **“§ 6104. Compliance with minimum standards**

18          “(a) REQUIREMENT.—In order to qualify for a grant  
 19          under section 6106, each State shall, within 2 years after  
 20          the date of the enactment of the Comprehensive One-Call  
 21          Notification Act of 1997, submit to the Secretary a grant  
 22          application under subsection (b).

23          “(b) APPLICATION.—

24                 “(1) Upon application by a State, the Secretary  
 25                 shall review that State’s one-call notification pro-

1       gram, including the provisions for implementation of  
2       the program and the record of compliance and en-  
3       forcement under the program.

4           “(2) Based on the review under paragraph (1),  
5       the Secretary shall determine whether the State’s  
6       one-call notification program meets the minimum  
7       standards for such a program set forth in section  
8       6103 in order to qualify for a grant under section  
9       6106.

10          “(3) In order to expedite compliance under this  
11       section, the Secretary may consult with the State as  
12       to whether an existing State one-call notification  
13       program, a specific modification thereof, or a pro-  
14       posed State program would result in a positive de-  
15       termination under paragraph (2).

16          “(4) The Secretary shall prescribe the form of,  
17       and manner of filing, an application under this sec-  
18       tion that shall provide sufficient information about a  
19       State’s one-call notification program for the Sec-  
20       retary to evaluate its overall effectiveness. Such in-  
21       formation may include the nature and reasons for  
22       exceptions from required participation, the types of  
23       enforcement available, and such other information as  
24       the Secretary deems necessary.

1           “(5) The application of a State under para-  
2           graph (1) and the record of actions of the Secretary  
3           under this section shall be available to the public.

4           “(c) ALTERNATIVE PROGRAM.—A State may main-  
5           tain an alternative one-call notification program if that  
6           program provides protection for public safety, the environ-  
7           ment, or excavators that is equivalent to, or greater than,  
8           protection under a program that meets the minimum  
9           standards set forth in section 6103.

10          “(d) REPORT.—Within 3 years after the date of the  
11          enactment of the Comprehensive One-call Notification Act  
12          of 1997, the Secretary shall begin to include the following  
13          information in reports submitted under section 60124 of  
14          this title—

15               “(1) a description of the extent to which each  
16          State has adopted and implemented the minimum  
17          Federal standards under section 6103 or maintains  
18          an alternative program under subsection (c);

19               “(2) an analysis by the Secretary of the overall  
20          effectiveness of the State’s one-call notification pro-  
21          gram and the one-call notification systems operating  
22          under such program in achieving the purposes of  
23          this chapter;

24               “(3) the impact of the State’s decisions on the  
25          extent of required participation in one-call notifica-



1       tion systems on prevention of damage to under-  
2       ground facilities; and

3               “(4) areas where improvements are needed in  
4       one-call notification systems in operation in the  
5       State.

6 The report shall also include any recommendations the  
7 Secretary determines appropriate. If the Secretary deter-  
8 mines that the purposes of this chapter have been substan-  
9 tially achieved, no further report under this section shall  
10 be required.

11 **“§ 6105. Review of one-call system best practices**

12       “(a) STUDY OF EXISTING ONE-CALL SYSTEMS.—Ex-  
13 cept as provided in subsection (d), the Secretary, in con-  
14 sultation with other appropriate Federal agencies, State  
15 agencies, one-call notification system operators, under-  
16 ground facility operators, excavators, and other interested  
17 parties, shall undertake a study of damage prevention  
18 practices associated with existing one-call notification sys-  
19 tems.

20       “(b) PURPOSE OF STUDY OF DAMAGE PREVENTION  
21 PRACTICES.—The purpose of the study is to assemble in-  
22 formation in order to determine which existing one-call no-  
23 tification systems practices appear to be the most effective  
24 in preventing damage to underground facilities and in pro-  
25 tecting the public, the environment, excavators, and public

1 service disruption. As part of the study, the Secretary  
2 shall at a minimum consider—

3 “(1) the methods used by one-call notification  
4 systems and others to encourage participation by ex-  
5 cavators and owners of underground facilities;

6 “(2) the methods by which one-call notification  
7 systems promote awareness of their programs, in-  
8 cluding use of public service announcements and  
9 educational materials and programs;

10 “(3) the methods by which one-call notification  
11 systems receive and distribute information from ex-  
12 cavators and underground facility owners;

13 “(4) the use of any performance and service  
14 standards to verify the effectiveness of a one-call no-  
15 tification system;

16 “(5) the effectiveness and accuracy of mapping  
17 used by one-call notification systems;

18 “(6) the relationship between one-call notifica-  
19 tion systems and preventing intentional damage to  
20 underground facilities;

21 “(7) how one-call notification systems address  
22 the need for rapid response to situations where the  
23 need to excavate is urgent;

24 “(8) the extent to which accidents occur due to  
25 errors in marking of underground facilities, untimely

1 marking or errors in the excavation process after a  
2 one-call notification system has been notified of an  
3 excavation;

4 “(9) the extent to which personnel engaged in  
5 marking underground facilities may be endangered;

6 “(10) the characteristics of damage prevention  
7 programs the Secretary believes could be relevant to  
8 the effectiveness of State one-call notification pro-  
9 grams; and

10 “(11) the effectiveness of penalties and enforce-  
11 ment activities under State one-call notification pro-  
12 grams in obtaining compliance with program re-  
13 quirements.

14 “(c) REPORT.—Within 1 year after the date of the  
15 enactment of the Comprehensive One-Call Notification Act  
16 of 1997, the Secretary shall publish a report identifying  
17 those practices of one-call notification systems that are the  
18 most and least successful in—

19 “(1) preventing damage to underground facili-  
20 ties; and

21 “(2) providing effective and efficient service to  
22 excavators and underground facility operators.

23 The Secretary shall encourage States and operators of  
24 one-call notification programs to adopt and implement the  
25 most successful practices identified in the report.

1       “(d) SECRETARIAL DISCRETION.—Prior to undertak-  
 2 ing the study described in subsection (a), the Secretary  
 3 shall determine whether timely information described in  
 4 subsection (b) is readily available. If the Secretary deter-  
 5 mines that such information is readily available, the Sec-  
 6 retary is not required to carry out the study.

7       **“6106. Grants to States**

8       “(a) IN GENERAL.—The Secretary may make a grant  
 9 of financial assistance to a State that qualifies under sec-  
 10 tion 6104(b) to assist in improving—

11               “(1) the overall quality and effectiveness of one-  
 12 call notification systems in the State;

13               “(2) communications systems linking one-call  
 14 notification systems;

15               “(3) location capabilities, including training  
 16 personnel and developing and using location tech-  
 17 nology;

18               “(4) record retention and recording capabilities  
 19 for one-call notification systems;

20               “(5) public information and education;

21               “(6) participation in one-call notification sys-  
 22 tems; or

23               “(7) compliance and enforcement under the  
 24 State one-call notification program.

1       “(b) STATE ACTION TAKEN INTO ACCOUNT.—In  
 2 making grants under this section the Secretary shall take  
 3 into consideration the commitment of each State to im-  
 4 proving its State one-call notification program, including  
 5 legislative and regulatory actions taken by the State after  
 6 the date of enactment of the Comprehensive One-Call No-  
 7 tification Act of 1997.

8       “(c) FUNDING FOR ONE-CALL NOTIFICATION SYS-  
 9 TEMS.—A State may provide funds received under this  
 10 section directly to any one-call notification system in such  
 11 State that substantially adopts the best practices identi-  
 12 fied under section 6105.

13   **“§ 6107. Authorization of appropriations**

14       “(a) FOR GRANTS TO STATES.—There are author-  
 15 ized to be appropriated to the Secretary in fiscal year  
 16 1999 no more than \$1,000,000 and in fiscal year 2000  
 17 no more than \$5,000,000, to be available until expended,  
 18 to provide grants to States under section 6106.

19       “(b) FOR ADMINISTRATION.—There are authorized  
 20 to be appropriated to the Secretary such sums as may be  
 21 necessary during fiscal years 1998, 1999, and 2000 to  
 22 carry out sections 6103, 6104, and 6105.

23       “(c) GENERAL REVENUE FUNDING.—Any sums ap-  
 24 propriated under this section shall be derived from general

1 revenues and may not be derived from amounts collected  
 2 under section 60301 of this title.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) The analysis of chapters for subtitle III of  
 5 title 49, United States Code, is amended by adding  
 6 at the end thereof the following:

“CHAPTER 61—ONE-CALL NOTIFICATION PROGRAM”.

7 (2) Chapter 601 of title 49, United States  
 8 Code, is amended

9 (A) by striking “sections 60114 and” in  
 10 section 60105(a) of that chapter and inserting  
 11 “section”;

12 (B) by striking section 60114 and the item  
 13 relating to that section in the table of sections  
 14 for that chapter;

15 (C) by striking “60114(c), 60118(a),” in  
 16 section 60122(a)(1) of that chapter and insert-  
 17 ing “60118(a),”;

18 (D) by striking “60114(c) or” in section  
 19 60123(a) of that chapter;

20 (E) by striking “sections 60107 and  
 21 60114(b)” in subsections (a) and (b) of section  
 22 60125 and inserting “section 60107” in each  
 23 such subsection; and

1 (F) by striking subsection (d) of section  
 2 60125, and redesignating subsections (e) and  
 3 (f) of that section as subsections (d) and (e).

Passed the Senate November 9, 1997.

Attest:

GARY SISCO,  
*Secretary.*